



## THE CITY OF SAN DIEGO **MANAGER'S REPORT**

DATE ISSUED: October 17, 2002 REPORT NO. 02-238

ATTENTION: Land Use and Housing  
Agenda of October 23, 2002

SUBJECT: Proposed 4<sup>th</sup> Update to the Land Development Code (LDC).  
Process Five

### SUMMARY

Issues - Should the Committee on Land Use and Housing recommend that City Council approve the Reasonable Accommodations provisions for persons with disabilities, the amendments to the SRO Hotel Regulations, the amendment to the Companion Unit Regulations, the amendments to the Residential Open Space Zone, the Board of Zoning Appeals, the consistency corrections to the LDC, and the minor format and reference corrections?

#### Development Services Recommendations -

1. Recommend that the City Council approve the Reasonable Accommodations provisions for persons with disabilities.
2. Recommend that the City Council approve the amendments to the SRO Hotel Regulations.
3. Recommend that the City Council approve the amendment to the Companion Unit Regulations.
4. Recommend that the City Council approve the amendments to the Residential Open Space Zone.
5. Recommend that the City Council dissolve the Board of Zoning Appeals.
6. Recommend that the City Council approve the consistency corrections to the LDC.
7. Recommend that the City Council approve the minor format and reference corrections.

Environmental Impact - Action on the Reasonable Accommodations provisions, the SRO Hotel Regulations amendments, the Companion Unit Regulations amendment, the Residential Open Space Zone amendments, the dissolution of the Board of Zoning Appeals, the consistency corrections, and minor format and reference corrections are exempt from the California Environmental Quality Act (CEQA) pursuant to the State Guidelines Section 15061(b)(3).

Code Monitoring Team (CMT) - On November 14, 2001, the Code Monitoring Team unanimously agreed to support the consistency corrections, the minor format and reference corrections and the policy issues included in the 4<sup>th</sup> Update. Additionally, the CMT had further recommendations on the amendments for the Reasonable Accommodations provisions, the SRO Hotels, and Companion Unit regulations which are described within this report under the individual topics.

Planning Commission Recommendation - On November 29, 2001, the Planning Commission voted 7-0 to approve the 4<sup>th</sup> LDC Update with the recommendations described within this report under the individual topics.

Fiscal Impact - None.

## BACKGROUND

The 4<sup>th</sup> Update to the Land Development Code (LDC) is part of the code monitoring and update process directed by the City Council as part of the adoption of the LDC. The first three updates resolved a total of 131 issues, many of which were minor format and reference corrections as well as consistency corrections identified by staff and the public during the two years of implementation.

Similar to the first three updates, the 4<sup>th</sup> Update includes minor format and reference corrections as well as proposed amendments that clarify various discrepancies in the regulations that have surfaced during implementation of the LDC. Additionally, because it was anticipated that the LDC Update Process would be the vehicle for bringing forth any policy issues and future amendments to the LDC, five additional policy issues have been included with the 4<sup>th</sup> Update.

## DISCUSSION

The 4<sup>th</sup> LDC Update includes 42 issues which have been divided into three categories. The first set are substantive issues intended to address either revisions to Federal or State law or amendments to procedures and regulations to address changing development practices. The second set of issues titled “consistency corrections” include various proposed changes that will clarify inconsistencies in the regulations and improve implementation of existing city policies. The third set of issues are the minor format and reference corrections. Staff has conducted extensive research and analysis on all the policy and consistency issues involving many City departments and other governmental agencies. The Code Monitoring Team, with representatives from professional organizations, community groups, business owners, environmental groups and other stakeholder groups also provided staff with valuable input and assisted in drafting the amendment language. Additionally, information on the 4<sup>th</sup> Update was distributed to the Community Planners Committee (CPC) at their July 23, 2002 meeting and they were encouraged to provide input to be included in this report.

Discussion of the policy issues and consistency corrections are included in the following pages under separate headings. Attachment 1 provides a summary of all the issues in a matrix format, Attachment 2 contains draft strikeout/underline language for policy issues and Attachment 3 contains consistency corrections. Attachment 4 contains correspondence from CPC representatives.

## **Policy Issues**

### **1. Reasonable Accommodations**

The Federal Fair Housing Act (FHA) and the California Fair Employment and Housing Act (FEHA) require that jurisdictions make reasonable accommodations in their zoning laws and other land use regulations to afford persons with disabilities the equal opportunity to use and enjoy a dwelling. On May 15, 2001, the Attorney General of the State of California sent a formal request encouraging local jurisdictions to adopt procedures for handling requests for reasonable accommodations. Although the mandate has been in place for several years, at the time of the Attorney General's correspondence only two local jurisdictions in California (Long Beach and San Jose) had provided a process in their zoning codes specifically designed to address reasonable accommodations for people with disabilities.

On August 17, 2001, staff members from Disability Services, the Land Development Code (LDC) Implementation Team, and members from the disability community met to review reference materials and discuss how the reasonable accommodations procedures could be implemented through the LDC. On September 19, 2001, the issue was presented to the Code Monitoring Team (CMT) by staff members from Disability Services with members from the disability community in attendance. Based on the existing ordinances adopted by Long Beach and San Jose as well as information compiled by Mental Health Advocacy Services, referenced in the Attorney General's letter, staff drafted a process for reasonable accommodations that fits within the organizational structure of the LDC. The proposed amendments would create a deviation process that could be used to modify existing residential development when the development regulations preclude persons with disabilities reasonable accommodation of a dwelling. The proposed changes would allow deviations to the required minimum setbacks and minimum parking requirements through a Process One decision. This process would allow flexibility in the design of a dwelling to accommodate, for example, the ingress and egress of wheelchairs or special parking needs of accessible vans. The proposed amendments also would allow for additional deviations through a Neighborhood Development Permit (Process Two) which would require notification to the surrounding neighbors. Deviations that may be permitted with a Neighborhood Development Permit would include changes in the minimum floor area ratio (FAR) requirements, encroachments into the angled building envelope plane requirements for height, or the accessory structure requirements. By adding flexibility in the application of residential development regulations through deviations in the LDC, the City will be able to provide persons with disabilities a process for requesting reasonable accommodations.

While the discussions focused only on amendments to the LDC, it was acknowledged that other City policies and practices may need to be reviewed in light of the reasonable accommodations request. This could include the review of the General Plan and Progress Guide, the Housing Element, California Building Codes, and the Street Design Manual. The respective City departments should work with the Disability Services staff to ensure that reasonable accommodation provisions are considered when updating any procedures or policies in City documents.

On November 14, 2001, the CMT agreed in concept to the proposed language for Reasonable Accommodations. The CMT recommended that requests for these accommodations be tracked for 18 months and for staff to report back to the CMT to assess the regulations.

At the November 29, 2001 hearing, the Planning Commission stated that the term “undue financial or administration burden” in Section 131.0466(c) was not clear and recommended that staff conduct further research. Staff found that according to the Fair Housing Amendments Act of 1988, the United States Department of Housing and Urban Development’s Section 504 of the Rehabilitation Act and case law, whether a particular accommodation is reasonable depends on specific facts, and must be decided on a case-by-case basis. The determination of what is reasonable depends on two factors. First, does the request impose an undue burden or expense on the local government? Second, does the proposed use create a fundamental alteration of the zoning program? If the answer to either question is “yes” the requested accommodation is unreasonable. For example, a person with a disability may request that the City waive the requirement for a side yard setback in a single dwelling unit zone in order to build a ramp to the front door. Granting this particular request would not cause an undue burden or expense for the City nor would the single dwelling unit character of the neighborhood be fundamentally altered. In this case the request would be reasonable and shall be granted. If the request would require that the City build a new road or extend utilities to a property causing a great public expenditure, the request would be imposing an undue financial burden on the City and therefore be unreasonable. Based on this information staff supports the language as currently drafted.

## **2. SRO Hotel Regulations**

The City Attorney has suggested revisions to the City's SRO Hotel regulations to maximize the enforceability of those regulations. The revised regulations maintain the replacement requirement of SRO units when units are demolished or converted to another use. The revisions include a change in noticing requirements to comply with the State's Ellis Act. In addition, the provisions close a loophole by requiring that any proposed development permit or construction permit for visitor accommodations be reviewed to determine whether the facility in question is an SRO Hotel. If the proposal does involve an SRO Hotel, the applicant will be required to obtain a Neighborhood Development Permit and to consult with the Housing Commission to ensure compliance with the SRO Hotel relocation

and replacement requirements. Additionally, the City Manager and Housing Commission staff, in concert with the City Attorney, are currently exploring additional strengthening revisions to these regulations as part of the implementation of the City's recently adopted Housing Element update.

The Planning Commission concurred with the CMT and recommended retaining the 90-day noticing requirement for termination of tenancy in Section 143.0560(d) rather than change it to 30 days. Staff agreed to further research the issue prior to the City Council hearing. Staff found that according to California Civil Code Section 1946, owners of a SRO hotel are required to give tenants a 30-day notice for termination of tenancy. The City of San Diego does not have the authority to require extended notice requirements because the provisions of the Ellis Act, allowing longer notice requirements, do not apply to non-rent controlled jurisdictions. However, under a new California Civil Code provision which will become effective on January 1, 2003, whenever a property owner proposes to demolish a residential dwelling unit, they will be required to give a written notice to current and prospective tenants prior to submitting an application for a demolition permit. This provision does not establish a specific number of days required for the notice, but does inform the tenants that the property is seeking a demolition permit. City staff will need to analyze the Civil Code provisions further to identify which City documents will need to be amended in order to be consistent with state law.

### **3. Companion Units**

In response to a recent Court of Appeals decision relating to restricting occupancy of companion units, the City Attorney is recommending revisions to the Companion Unit regulations. The court's decision concluded that local governments cannot restrict the occupancy of companion units. In addition, a number of other cases have determined that limiting the occupancy of a residential structure to a certain number of persons violates the right to privacy and equal protection clause of the California Constitution and may also be preempted by state occupancy standards. The proposed amendment would delete the requirement that companion units can only be occupied by a maximum of two persons at least one of whom shall be related to the owner, or a senior citizen, or a person with a disability.

The CMT and the Planning Commission supported the proposed amendment. In addition, they recommended that staff thoroughly review the companion unit regulations to identify ways to encourage the development of companion units. An overall update to the companion unit regulations is currently being conducted by the Community Planning staff as a housing policy issue and will be taken forward as a separate item. The only proposed amendment included in the 4<sup>th</sup> Update is the change to the occupancy requirement to be consistent with state law.

### **4. Residential Open Space Zone Category**

During the community plan update process of several communities located in urbanized areas such as Linda Vista, Mid-City and La Jolla, staff discovered the need for an additional residential open space zone category to address existing residential parcels that are adjacent to canyons or steep hillsides. Under the previous zoning code, many of these parcels were split-zoned with a low density residential zone, such as the R1-40,000, applied to the rear portion of the lot adjacent to the canyon or steep hillside. This occurred because the previous zoning code did not have a residential open zone category available. With the adoption of the LDC, two new residential open space categories, OR-1-1 and OR-1-2, were created to allow for limited private residential development while maintaining the protections of the open space zone. Since implementation of the LDC, it was realized that neither zone adequately addresses the narrow lots commonly found in existing urbanized communities. Currently, the required setbacks are too wide and the maximum floor area ratio (FAR) requirement is too low to allow for any development. For example, the existing OR-1-1 zone requires side yard setbacks of 20 feet on each side, for a typical 50-foot wide lot this requirement would make the building envelope only 10 feet wide. The proposed amendment would modify the setbacks and maximum allowable FAR to be more consistent with the requirements of the residential zones while still maintaining the protections of the open space zone. The minimum front and rear setbacks would be reduced from 25 to 15 feet and the minimum side setbacks would be reduced from 20 feet to 8 feet. The maximum FAR would increase from 0.10 to 0.45. All remaining use and development regulations, including permitted uses, maximum structure height, maximum lot coverage, and allowable development area of 25 percent will remain the same. These amendments will not automatically apply to existing parcels upon approval of the 4<sup>th</sup> Update. A future re-zoning process would need to be initiated either by the City or the property owner.

## **5. Board of Zoning Appeals**

The Board of Zoning Appeals was originally established in 1952 to act on appeals of the Hearing Officer's decisions, which included decisions on variances, Conditional Use Permits and other special permits. During the code update process the function of the Board of Zoning Appeals was discussed and reviewed by City staff, the Planning Commission and the Board itself. Due to the changes in decision levels on some permits and the consolidation of processing under the LDC, it was determined that the Board would only hear and determine appeals of general relief variances. Since implementation of the Land Development Code, it has become apparent that the number of variance appeals is particularly low. Over the past year the Board has only met twice. Additionally, all of the Board member's terms have expired but since no successors have been appointed the Board members are continuing to serve.

When staff presented the issue to the members of the Board at their October 17, 2001 hearing, the general response was that although they meet infrequently, they do in fact serve a purpose in the review process. Board members commented that circumstances may change over time and there is a possibility that more variance appeals would be brought

forward. They expressed concern about disassembling the Board now, and facing the prospect of having to re-establish it if the need arose in the future. The Board also suggested that they could assist the Planning Commission by taking over some of the appeals currently heard by the Commission.

Staff continues to believe that the infrequency of the Board's meetings, the low volume of items heard and the unlikelihood that this trend will change dramatically in the future, indicates that the Board is no longer necessary. Staff is recommending the dissolution of the Board of Zoning Appeals and transferring its powers and duties to the Planning Commission.

### **Residential Parking Regulations**

Staff has withdrawn this issue from the 4<sup>th</sup> Update because it relates to the broader issue of affordable/in-fill housing projects and should be considered comprehensively with other housing regulatory changes.

### **Consistency Corrections**

Amendments to the following 15 issues are proposed to correct inconsistencies in the regulations, clarify confusing aspects of the regulations, or correct provisions that have created unintended consequences.

6. **Southeastern San Diego Planned District Ordinance (PDO)** - As part of the adoption of the Land Development Code (LDC), the Planned District Ordinances were also amended to reflect the new section numbers of the LDC. During the translation of the sections, the reference to the residential storage regulations were inadvertently left out of the Southeastern San Diego PDO. The proposed correction will add a reference to the Applicable Regulations Section of the Southeastern San Diego PDO to reference Land Development Code Chapter 14, Article 2, Division 11 (Outdoor Storage, Display, and Activity Regulations). The change will allow Neighborhood Code Compliance staff to reference a specific section when issuing a notice of violation.
7. **Remove redundancies between Chapter 6 and LDC** - As part of the adoption of the LDC, many of the regulations contained in Municipal Code Chapter 6, Article 2 relating to public improvements, public right-of-way, encroachments, and grading were transferred to applicable sections of the LDC. However, the ordinance adopting the LDC did not repeal the necessary divisions. The proposed amendments would repeal the duplicative sections in Chapter 6 and where necessary transfer Chapter 6 regulations to the applicable sections of the LDC.
8. **Park Fees** - As part of the adoption of the Land Development Code, the City Manager was directed to bring back ordinances making revisions to Chapter 6 of the Municipal Code, including revising regulations pertaining to fees collected to provide parks in connection

with new development in the City. The City Attorney has revised the regulations to ensure compliance with the State Subdivision Map Act and applicable law related to development impact fees. The updated regulations are intended to provide the City maximum ability to collect applicable fees to ensure continued development of parks to meet community needs.

9. **Defacing or Removing Posted Notices** - Currently the LDC does not have a specific regulation that prohibits the defacing or removal of a Notice of Application or a Notice of Future Decision placed on a property. The proposed amendment would add a section to clarify that it is unlawful to deface or remove a posted notice. The change will allow Neighborhood Code Compliance staff to reference a specific section when issuing a violation citation.

10. **Amend the Definition of Kitchen** - When the LDC was adopted the definition of kitchen changed from “a facility used or designed to be used for the preparation of food” to “facilities used or designed to be used for the preparation of food and contains a sink, a refrigerator, stove and a range top or oven.” The definition became more specific by including the various appliances that must be present to determine if a room is a kitchen. The reason that the new definition has been found to be problematic is that many illegal dwelling units only have a small refrigerator, a small sink, and maybe a microwave or hot plate. A defining factor of a dwelling unit is that it must contain a kitchen. It has been difficult for Neighborhood Code Compliance staff to issue citations for illegal dwelling units because the owners claim that they do not have all of the appliances that constitute a kitchen therefore it cannot be considered a dwelling unit. In most of these code enforcement cases the owners are renting out illegal units that lack adequate cooking facilities which in turn create health and safety hazards in the neighborhoods.

Staff originally proposed to revert to the former definition of kitchen that just stated that a kitchen is a facility used or designed to be used for the preparation of food . The Planning Commission recommended against the definition because they thought it was not specific enough. Staff has since revised the language as follows: Kitchen means “facilities used or designed to be used for the preparation of food and usually containing a sink, a refrigerator and a stove, ~~and~~ a range top or oven.” The new definition adds more specificity and also provides some latitude for Code Compliance staff to make a determination if the unit is actually functioning as a separate, illegal dwelling unit.

11. **Determining Proposed Grade and Height Measurement for Pools and Spas** - As the provision is currently written the height of a building/structure within 5 feet of a pool is dictated by the depth of the pool. This confusion is due to the fact that pools are considered a structure when determining proposed grade. By excluding pools from the calculation the confusion is remedied and the intent of the regulation is clear. Proposed language would amend Section 113.0231 to exclude pools from the calculation of proposed grade. It is also necessary to clarify Diagram 113-02H where it explains how much vertical distance is allowed between existing grade and proposed grade before that level is considered the finish floor. The proposed changes will eliminate confusion when measuring structure



height in these two instances. Additionally, a new section will describe how to measure overall building height when a pool is located within 5 feet of the structure (Section 113.0270(a)(8)).

- 12. Clarify Procedures for the Newly Adopted Process Two Right-of Way Permit** - In February 2001, the City Council approved an amendment to Municipal Code Chapter 6 to require a Process Two permit for walls and fences encroaching into the public right-of-way. The amendment did not include the necessary changes to the LDC to clarify that the Process Two permit should be processed as a Neighborhood Development Permit (NDP). The proposed language clarifies that a NDP is required when walls and fences encroach into the public right-of-way and also includes a reference to the applicable sections in Chapter 14. Consistent with the amendments to Chapter 6 as described in Issue 7, the prior amendments to Section 62.0301 will be transferred to the applicable LDC sections.
- 13. Procedures for Issuing a Stop Work Order** - According to the current language the City Attorney must approve all Stop Work Orders before they are issued except where irreparable harm is imminent so as to warrant an emergency Stop Work Order. Clarification is needed to distinguish between work being done with a permit and work being done without a permit. The proposed language clarifies that the requirement for City Attorney approval only pertains to work where a permit has been issued. City Attorney approval is not needed to issue a Stop Work Order for work that is being done without a permit or being done illegally. Neighborhood Code Compliance would then be able to issue a Stop Work Order immediately under circumstances where a permit has not been issued.
- 14. When a Map Waiver May Be Requested** - The Subdivision Map Act, Sections 66428 and 66428.1, allows a subdivider to request a waiver from the requirement to file a tentative map, parcel map, or final map for the development of condominium projects. The current language in the LDC only addresses the construction of new condominium projects and does not specify that existing structures are also eligible for map waivers. The proposed language would clarify that conversions of existing structures into condominiums, are allowed to request a map waiver.
- 15. When a Demolition Removal Permit May Be Issued** - The proposed amendment is needed to clarify when a demolition permit should be issued for a structure on a property that has a development permit application in process. The proposed edit is consistent with the requirement of consolidation of processing which requires that multiple permits or approvals be consolidated and reviewed by a single decision maker based on the highest level of authority.
- 16. Variable Setbacks in Residential Zone** - In the Residential Estate (RE) and Residential-Single Dwelling Unit (RS) zones, side yard setbacks are allowed to observe a designated minimum dimension as long as the combined dimensions of both side setbacks equals at least 20 percent of the lot width. The variable setback option was intended to allow

applicants flexibility in the siting of structures and to protect views where applicable. However, the variable side setback was not intended to allow development to observe minimum setbacks on both sides of the premises. Since this distinction is not clear, the proposed language clarifies that once a side setback is established for the premises, it applies to all additions constructed thereafter.

17. **Consistency between Bay Window and Dormer Projections** - As currently written, the LDC requires that bay windows must be placed at least 4 feet from the property line. The requirement for dormers is 3 feet from the property line. For consistency purposes, the proposed amendment would allow both bay windows and dormers be placed 3 feet from the property line.
18. **Mission Trails Design District** - Currently the regulations state that any development or alteration of a structure within the Mission Trails Design District that requires a building permit would require a Site Development Permit (SDP). To clarify the intent of the Mission Trails Design District provisions, the proposed amendment will clarify that a SDP is not required for minor alterations even if a building permit is required.
19. **Refuse and Recyclable Material Storage** - The current requirements for refuse and recyclable material storage areas states that a premises served by an alley shall provide material storage areas that are directly accessible from the alley and that material storage areas in a commercial development shall be located at least 25 feet from any pedestrian and vehicular access points. If alley access is encouraged for commercial development but the regulations also require refuse/material storage be located at least 25 feet from any access point it makes it very difficult for development to meet both of these provisions. The proposed amendment separates commercial development on premises not served by an alley from premises that are. The proposed amendment will allow for commercial development on a premises not served by an alley to provide a storage area at least 25 feet from any access point. This will eliminate conflicting requirements.
20. **Retaining Wall Regulations** - The current LDC Diagram 142-03G (Retaining Wall Requirements) does not coincide with the text and can be confusing. The proposed modifications for this section would update the text within the diagram so it agrees with text contained in the associated provisions. For example, the diagram currently uses the term “horizontal separation” and the text in the provisions use the term “horizontal distance” to convey the same information. Additionally, the text below the diagram states that the horizontal separation can be equal to or less than the height of the upper wall. This

statement is inconsistent with the requirements of the section. The proposed edits will correct the statement to say that the minimum horizontal distance must be equal to the height of the upper wall.

## CONCLUSION

Based on extensive analysis and public input for each issue described above, Development Services recommends approval of the proposed policy issues, consistency corrections and minor format corrections included in the 4<sup>th</sup> LDC Update. Additionally, the proposed code amendments are consistent with, and implement, the original goals of the Land Development Code which are: clarity, objectivity, consistency, predictability, simplicity, adaptability, progressiveness, and integrity.

ALTERNATIVES:

1. Modify the recommendations proposed for the policy issues, consistency issues, and minor format and reference corrections.
2. Deny the proposed policy issues, consistency issues and minor format and reference corrections.

Respectfully submitted,

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Tina P. Christiansen, A.I.A.  
Development Services Director

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Approved by: P. Lamont Ewell  
Assistant City Manager

CHRISTIANSEN/BAM

Note: Attachment No. 4 is not available in electronic format. A copy is available for review in the Office of the City Clerk.

Attachments: [1. Fourth Update Issue Matrix.](#)  
[2. Draft Strikeout/underline language for policy issues](#)  
[3. Draft Strikeout/underline language for consistency corrections.](#)  
4. Correspondence from CPC members